

The Meaning behind the Second Meaningful Vote

The Background

The House of Commons revisited the Government's 585 page Withdrawal Agreement with the European Union (EU) on 12 March for a second 'meaningful vote'. The 'meaningful vote' is the common name given to section 13 of the European Union (Withdrawal) Act 2018, which compelled the Government to bring forward an amendable parliamentary motion at the end of the Article 50 negotiations with the EU. Before the exit agreement is ratified and incorporated into UK law through an Act of Parliament, the House of Commons must approve the withdrawal agreement via a motion and the House of Lords must consider that same motion.

The first meaningful vote took place in the Commons on 15 January 2019, which resulted in a 230-vote defeat for the Government – the worst defeat for a UK Government in modern history. Central to this defeat was the opposition of Conservative backbenchers and the DUP to the 'Irish backstop'. The backstop is an insurance policy, ensuring the Irish border remains open, which honours the Belfast Agreement of 1998. If the negotiations between the EU and the UK on the future trading relationship between the two are not successful, under the backstop the whole of the UK enters a 'single customs territory' with the EU. In addition, Northern Ireland would remain aligned to the Single Market to ensure the Northern Irish border remained open.

The Current Situation

On 11 March, the Prime Minister negotiated further documents that now form part of the UK's exit arrangements from the EU. Alongside the Withdrawal Agreement and the Political Declaration were three other documents. First, a Joint Interpretative Instrument, a legal add-on to the withdrawal agreement, giving legal force to a letter from the Presidents of the EU Commission and Council, stating that it is the EU's intention to negotiate an alternative to the 'Northern Ireland backstop'. Second, a unilateral statement from the UK stating that, if the backstop became permanent, and talks were not advancing on an alternative, that the UK can exit the backstop. Third, the political declaration, a non-binding document accompanying the Withdrawal Agreement, has had additional language added to it, illustrating the need to find an alternative to the backstop.

Yet these concessions (and the EU made clear that no further concessions would be forthcoming going forward) were not enough for the House of Commons, who voted by 391 votes to 242, a majority of 149, to reject the Government's Withdrawal Agreement, the fourth largest Government defeat in history.

What's Next?

Now that the meaningful vote has been defeated for a second time, the immediate next steps are clear. On Wednesday 13 March MPs will vote on whether to leave the EU with 'No Deal'. If MPs do not vote in favour of this then, on 14 March, MPs will vote on whether to extend Article 50 TEU. The matter of an Article 50 extension is not, however, a matter for the UK Parliament. Any request for an extension would have to be considered by the EU, and specifically the European Council's meeting of 21-22 March. The European Council is in a position to determine both whether an extension is granted, and also the length of the extension. There is a case to suggest that any extension may only be granted until 30 June

2019. New MEPs take their seats in July, and a short-term extension would mean the UK does not take part in this May's European Parliament elections.

The Labour Party once again called for a General Election. However, since the passage of the Fixed Term Parliaments Act 2011 the only way that this can be brought about is through a formal Vote of Confidence or having two-thirds of MPs voting in favour of calling an election. The Act, passed by the Coalition Government, has effectively hamstrung Parliament. This is because historically, situations such as the present one, with a key Government policy suffering huge defeat, would have led to an election by convention. However, under the 2011 Act, the Opposition does not have the numbers to guarantee a Government defeat in a confidence vote, meaning that the UK is likely to continue with a hung Parliament until the next scheduled election, in 2022.

The Difficulties Ahead

It is highly probable that the EU will grant the UK an extension to Article 50. Doubtless those who support a Second Referendum will greet this news happily. Yet this does not mean that the fundamentals of the situation will have changed. If anything, an Article 50 extension makes a No Deal Brexit *more* likely. Without a General Election, and with a hung Parliament, there may be a majority in Parliament against No Deal, but there is not a clear majority in favour of a Second Referendum, or a deal, be it designed by the Government or the Opposition. It is also true to say that any number of votes in the Commons decrying No Deal do not have any weight. If the UK reaches the end of the Article 50 period without a deal being agreed, the UK will leave without a deal.

In the meantime, the Civil Service will continue its preparations for No Deal, with over a hundred statutory instruments needed before a No Deal exit still awaiting debate in Parliament. And even if a deal is passed by the Commons and Lords before the extension of Article 50 expires, there are still six Bills which will need to be passed, covering everything from Trade to Agriculture, that have to become law before Exit Day.

The Commons rejection of the Government's Withdrawal Agreement again has added more uncertainty to the UK's future rather than solving anything. MPs, who until now have shown little desire to compromise on their positions, making the perfect the enemy of the good, will have to compromise to avoid the UK crashing out of the EU. Whether this is realistic is to be seen.